

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 27.06.2018	Delivered on 09.07.2018
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CORAM:

THE HONOURABLE MR. **JUSTICE K.K.SASIDHARAN**

AND

THE HONOURABLE MR. **JUSTICE R.SUBRAMANIAN**

CMP Nos.6920, 6180 & 6181 of 2018
in W.A. SR Nos.37459, 37436 & 37433 of 2016

P.Venkata Rao (Died on 18.05.2017)
Rep by his General Power of Attorney,
Mr.A.K.K.Elangovan,
No.3-K, Kellys Road, Ranipet 632 401.
Vellore District

P.Gopal

versus

...
Petitioner
in all the petitions

1. Secretary to Government,
Revenue Department,
Fort St. George, Chennai 600 009.

2. The District Collector,
Thiruvallur District, Thiruvallur.

... Respondents in CMP 6920/18
Respondents 2 & 3 in CMP 6180,6181/18

Tata Communications Ltd.,
Having its registered office at,
VSB, Mahatma Gandhi Road, Fort,
Mumbai 400 001 and
Chennai office at No.4 Swami Sivananda Salai,
Chennai 600 002, and
Rep. By its Deputy General Manager,
Mr.N.Kesava Prasad.

... 1st Respondent in CMP 6180/2018

Videsh Sanchar Nigam Employees' Cooperative,
Housing Society,
Rep. By its President,
Mr. Joseph Manoharan,
No.4, Swami Sivananda Salai,
Chennai 600 002.

... 1st Respondent in CMP 6181/2018

cause title accepted vide order of this Court dated 14.03.2018,
made in CMP Nos.5151, 5152 & 5162 of 2018 in
WA SR Nos.37436, 37433, 37459/2016 by KKSJ & PVJ

Prayer: Applications are filed under Order IV Rule 9 (4) of Appellate Side Rules, praying to condone the delay of 600 days in representing W.A.SR. No.37459 of 2016, 603 days in representing WA SR. No.37436 of 2016 and 603 days in representing W.A.SR.No.37433 of 2016.

For Petitioner : Mr.Lakshmi Narayanan
for M/s.P.V.Murlidhar

For Respondents : Mr.G.Masilamani, Senior Counsel
for M/s.King & Patridge for R1 in CMP 6180/18

Mr.P.Ravi Shankar Rao
for R1 in CMP 6181/18

Mr.V.Anandhamoorthy, Addl. Govt. Pleader
for RR in CMP 6920/18
for RR 2 & 3 in CMP 6180 & 6181/18

COMMON ORDER

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The petitioner in all these Civil Miscellaneous Petitions seek condonation of delay in re-presentation of the Writ Appeals filed in WA SR No.37459, 37433 & 37436 of 2016. While the delay in re-presentation of WA SR No.37459 of 2016 is 600 days and the delay in other cases is about 603 days.

2. The challenge in these Intra Court Appeals is to the orders of the learned Single Judge, made in Review Application Nos.197 of 2015, 192 of 2014 and 210 of 2015, in and by which, the learned Single Judge reviewed the judgment rendered by him in WP No.11859 of 2014. As the prayer in these Civil miscellaneous Petitions is only for condonation of delay in representation, we do not propose to traverse the merits of the claims of the rival parties, though, Mr.G.Masilamani, learned Senior Counsel appearing for the 1st respondent would invite us to look into the merits of the claim also even at the threshold, while considering the question of delay in re-presentation. Therefore, we confine ourselves to the delay, the explanation offered by the petitioner and the sufficiency of the cause set out by the petitioner in seeking condonation of delay.

3. Mr.V.Lakshmi Narayanan, learned counsel appearing on behalf of the counsel for the petitioner would submit that the appeal itself was filed by the predecessor in interest of the present petitioner Mr.P.Venkata Rao. Since he died after the filing of the appeal his legal representative have been brought on record. Even at the time of filing of the appeal, the said Mr.P.Venkata Rao, who is the senior citizen was suffering from several ailments. The reasons for the delay are set out in paragraph 3 of the affidavit filed in support of these applications. The reasons are identical.

From the affidavit filed in support of the applications, it is seen that the

Appeals were presented originally on 01.06.2016 and they were returned for certain defects on 06.06.2016, granting time till 16.06.2016 for representation.

4. The petitioner would further aver that during the intervening summer holidays of 2016, the disposal bundles from the Lawyer's Chambers were shifted to their office and during such shifting, the appeal papers got mixed up with other disposed of cases. When the appeal papers were sought to be re-presented, they were found missing and could not be traced despite a frantic search. Subsequently, while searching for some of the old disposal bundles, the appeal papers were found and steps were taken to re-present the same. It is also averred that the original appellant viz. Mr.P.Venkata Rao, died in the meantime on 18.05.2017 and this factor also contributed to the delay.

5. Mr.G.Masilamani, learned Senior Counsel appearing for the 1st respondent would require us to make a microscopic examination of the affidavit filed in support of the application. Pointing out that the papers were returned in June 2016, after the Court had reopened after the summer holidays, Mr.G.Masilamani, learned Senior Counsel would submit that the very claim that the papers were shifted during the intervening summer holidays is not correct. He would also further point out that though the original appellant Mr.P.Venkata Rao, died on 18.05.2017, the papers

were represented only after the period of about 9 months on 04.02.2018. These contradictions according to Mr.G.Masilamani, learned Senior Counsel would demonstrate lack of *bona fides* on the part of the petitioner in seeking condonation of delay. He would also rely upon the judgments of the Hon'ble Supreme Court in ***H.Dohil Constructions Company Pvt. Ltd v. Nahar Exports Limited and Another***, reported in **2015 (1) SCC 680** and ***Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and others***, reported in **2013 (12) SCC 649**.

6. There is no quarrel about the law laid down by the Hon'ble Supreme Court in the above two judgments. Of course, lack of *bona fides* is definitely a ground, which would disentitle a person from seeking any relief from a Court of law. However, we should also not loose sight of the fact that the Court exist for rendering justice than for legalizing injustice as observed by Hon'ble Mr.Justice Thakar, in ***The Collector, Land Acquisition v. Master Katiji and others***, reported in **100 LW 676**. Such position has also been reiterated by the Hon'ble Supreme Court in ***Esha Bhattacharjee***'s case, referred to supra, the principles that are applicable for condonation of delay have been set out as follows by the Hon'ble Supreme Court:

"21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (i) There should be a liberal, pragmatic, justice-oriented,

non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.

21.3. iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle

is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12. xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13. xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”

7. If we are to test the present case in the light of the parameters set out by the Supreme Court, we should definitely conclude in favour of the petitioner. As already stated, the delay is not very lengthy or inordinate delay. Of course, it is nearly about two years, the fact that the original appellant had died during the interregnum should also be considered. The overall circumstances, when looked at, may suggest, a certain amount of negligence on the part of the petitioner as well as their counsels, but such negligence cannot be equated to lack of *bona fides* or gross negligence as suggested by the Hon'ble Supreme Court as reasons for refusing the relief of condonation of delay. Of course, when the delay is inordinate and a

callous indifference is shown to exist in the attitude of the petitioner or their counsel, the Court should be strict in condoning such delay. But at the same time, certain discrepancies here and there in the affidavit filed in support of the applications seeking condonation of delay, cannot be microscopically examined as suggested by Mr.G.Masilamani, learned Senior Counsel appearing for the 1st respondent. If we do so, we are afraid that we will be making a mountain out of the mole hill.

8. We must also point out that in both the cases relied upon by Mr.Masilamani, learned Senior counsel appearing for the 1st respondent, the delay was inordinate, while in **H.Dohil Constructions Company Pvt. Ltd's** case, referred to supra, the delay was nearly 5 years and the Hon'ble Supreme Court on facts found that the appeal itself was filed without payment of proper Court Fee and the same was sought to be re-presented after 5 years and hence the Hon'ble Supreme Court concluded that there was lack of *bona fides* on the part of the appellants. In **Esha Bhattacharjee's** case, cited supra, the delay was about 7 years and the very claim that the delay was due to lack of knowledge of the order passed by the learned Single Judge of the High Court was found to be false. In those circumstances, the Hon'ble Supreme Court concluded that there was lack of *bona fides* on the part of the appellants therein.

9. But in the case on hand, we find that a overall liberal reading of the affidavit does show sufficient cause for condonation of delay. Of course, the question of prejudice is projected by Mr.G.Masilamani, learned Senior Counsel appearing for the 1st respondent, but, apart from the fact that the respondents have been made to face a few litigations in Court, no other circumstance has been brought before us, to show how exactly the 1st respondent would be prejudiced by condonation of delay.

10. The 1st respondent is in possession of the land in question, which according to it has been assigned by the Government of Tamil Nadu and the original appellant had claimed that he is entitled to the land in question. As already stated, we do not propose to enter into the merits of the controversy. The delay is only in re-presentation of the Appeals and not in filing. We are therefore, of the considered view that no prejudice would be caused to the 1st respondent by the delay being condoned.

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11. In view of the foregoing reasons, all the three applications are allowed and delay in re-presentation of the appeals are condoned. However there will be no order as to costs.

(K.K.SASIDHARAN, J.)

(R.SUBRAMANIAN, J.)

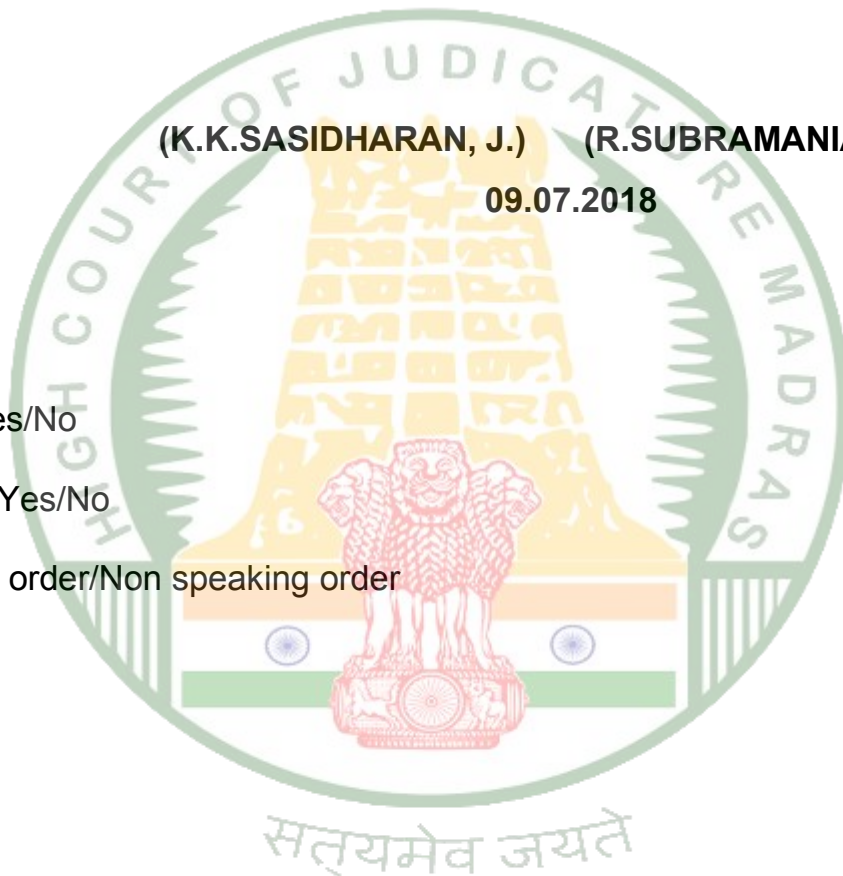
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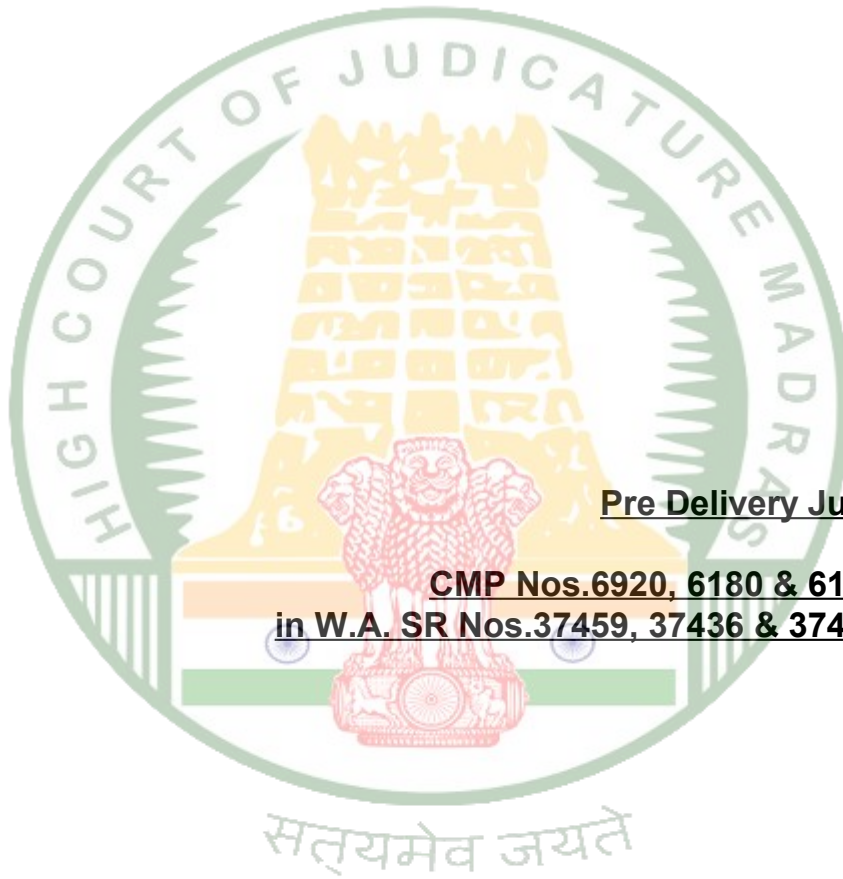
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K.K.SASIDHARAN, J.

and

R.SUBRAMANIAN, J.

(jv)



Pre Delivery Judgment in

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